MISCELLANY.

NEGOTIABLE INSTRUMENTS—PROVISION FOR THE PAYMENT OF ATTORNEY'S FEES—EFFECT—VA. CODE 1904, SEC. 2841a, SEC. 2.—We have recently heard some criticisms of the North Carolina case of *Exchange Bank* v. *Apalachian Land, etc., Co.*, 128 N. Car. 193, in which the court, after the passage of the Negotiable Instruments Act in that State, held that a clause in a negotiable instrument providing for the payment of attorney's fees in case of suit on the note is invalid, thereby adhering to a case (*Tinsley* v. *Hoskins*, 111 N. Car. 340) which was decided before the passage of the act. But we do not believe that the criticisms are well founded. The Negotiable Instruments Act, as adopted in North Carolina and other States, provides in effect that an instrument is for a sum certain (that is made one of the essentials to negotiability) although it is to be paid with the costs of collection, or an attorney's fee, in case payment shall not be made at maturity. But it is not believed that this is a declaration one way or the other upon the question of the validity of such stipulations. This provision certainly changes the rule which has been enunciated in a number of States (4 Am. & Eng. Encyc. of Law (2d ed.), p. 100, note 3), including North Carolina (*New Windsor, etc., Bank* v. *Bynum*, 84 N. Car. 24, 37 Am. Rep. 604), to the effect that these stipulations render an instrument nonnegotiable, but it does not have the effect of giving validity to the stipulations. To hold that the enactment not only provides that the negotiability of an instrument is not destroyed by stipulations for the payment of costs of collection and attorney's fees, but that it has the effect of giving validity to these stipulations, would be to read into the statute something that was not put there by the legislature. It is true enough that there is a direct conflict of authority in the United States upon the question of the validity of these stipulations and that the prime object of the enactment of the Negotiable Instruments Act is to promote uniformity in the law of negotiable instrument; nevertheless, assuming that it was the intention of the legislature to settle the question of the validity or invalidity of these stipulations, which is by no means certain, that intention was not expressed with sufficient clearness to give it effect. If the statute does not go so far as it was intended that it should go, nor as it ought to go, it is for the legislature, and not the courts, to remedy the defect. But it is probable that the law in this respect expresses the intention of the legislature of North Carolina and of the draftsmen of the Negotiable Instruments Law. That law had to be somewhat of a compromise, and the question of the negotiability of instruments containing clauses for the payment of costs and attorney's fees was probably regarded as the all important question to be settled.—*Law Notes* (*N. Y.*).

This is the same view taken in 10 Va. Law Reg. 461.

STRIKE REFLECTIONS—CRITICISM OF VIEWS OF HON. CAMM PATTESON.—Voices are constantly being heard of late against the life tenure of federal judges. A late statement comes from Mr. Camm Patteson, of Howardsville, Va., contributed to the VIRGINIA LAW REGISTER, who, in an article on the "Judicial Usurpation of Power," argues that the fatal mistake of the federal Constitution was the life tenure of the judicial office.

Mr. Patteson insists that the terms of the judges should be for twelve years, "from the highest to the lowest," to be elected by the people.

The immediate occasion for Mr. Patteson's article is the late decision of the Supreme Court of the United States, in *South Dakota* v. *North Carolina*, 192 U. S. Rep., 286, which, he says, "marks a new epoch in our history, and, in all human probability, will be productive of the most disastrous consequences."

Whatever just criticism may be leveled against this decision, the writer of the article in the VIRGINIA LAW REGISTER loses his balance in the denunciation of the Debs case, although claiming to abhor and detest Debsian principles. Mr. Patteson writes:

"The fatal extension of the power of the process of injunction which has occurred under Grover Cleveland's second administration, was up to that time the greatest step of all. It tore down and trampled under foot the chief protection of American liberty. Since its inauguration, curious scenes have been witnessed in federal courts. The so-called protection of the United States mail was used as a mere pretext to cover the unauthorized usurpation of power; the imprisonment of Debs was wrong upon principle. . . . The manner in which the process of injunction has been used by the federal judges since that memorable decision, is well calculated to arouse alarm in the bosom of American liberty."

Whatever just argument might exist against the federal judiciary system as to tenure, it will never receive the discontent of the conservative people at large, because President Cleveland protected the federal injunction with the arm of the military. Just now, through the illadvised and revolutionary action of labor leaders, actual war exists in the streets of Chicago, and no one will deeply regret if such revolutionary measures are handled with the powerful aid of the federal injunction. Indeed, people who would otherwise favor the election of federal judges and United States Senators by the vote of the people, are beginning to overhaul their academic conceptions of federal power, and rejoice in the fact that weak state and city governments may occasionally need and receive the protection of the strong power of the federal government. In such a dilemma the non-elective part of the government is stronger than the elective.

It is one thing to dream away one's life in some Arcadian village in the State of Virginia and cogitate upon great governmental questions—and another thing to live in a throbbing metropolitan city where the practical affairs of government require sane and conservative methods superinduced by the stress and force of metropolitan life in a great city and in a still greater country. Virginia ideas have often been wrong, and there was as much denunciation in Virginia when Chief Justice Marshall made his

great decisions as now, when with the aid of Marshall's profounder wisdom, we have the help of forceful governmental powers which he forged for the benefit of the great nation.—*The National Corporation Reporter.*

LIST OF VIRGINIA DECISIONS ANNOTATED IN THE AMERICAN DECISIONS [continued from 11 Va. Law Reg. 152].—"N" means extensive note.

Howatt v. Davis	5	Munf.	34,	7	Am.	Dec.	681
Chalmers v. McMurdo	5	"	252,	7	"	"	684
Hundley v. Lyons	5	"	342,	7	"	"	685
Ritchie v. Moore	5	"	388,	7	"	"	688
Ward v. Johnson	6	"	6,	8	"	"	729
Shaver v. White	6	"	110,	8	"	"	730
Findlay v. Smith	6	"	134,	8	"	"	733
Norvell v. Camm	6	"	233,	8	"	"	742
Taylor v. King	6	"	358,	8	"	"	746
Poindexter v. Waddy	6	"	418,	8	"	"	749
Greenhow v. Harris	6	"	472,	8	"	"	751
Bourke v. Granberry		Gilmer	16,	9	"	"	589
Trent v. Trent		"	174,	9	"	"	594
Slaughter v. Green	1	Rand.	3,	10	"	"	488–n
Wilson v. Spencer	1	"	76,	10	"	"	491
Burwell v. Corbin	1	"	131,	10	"	"	494–n
Harvey v. Alexander	1	"	219,	10	"	"	519
Crouch v. Puryear	1	"	258,	10	"	"	528
Chowning v. Cox	1	"	306,	10	"	"	530
Tazewell v. Smith	1	"	313,	10	"	"	533
Thweatt v. Jones	1	"	328,	10	"	"	538
Stuart v. Luddington	1	"	403,	10	"	"	550
Newman v. Chapman	2	"	93,	14	"	"	766–n
Evans v. Kingsberry	2	"	120,	14	"	"	779
Jones v. Hook	2	"	303,	14	"	"	783
Chamberlayne v. Temple	2	"	384,	14	"	"	786
Turner v. Street	2	"	404,	12	"	"	792
McMahon v. Fawcett	2	"	514,	14	"	"	796
Ralston v. Miller	3	"	44,	15	"	"	704
Banks v. Poitiaux	3	"	136,	15	"	"	706
Wiseley v. Finlay	3	"	361,	15	"	"	712–n
Thompson v. Jackson	3	"	504,	15	"	"	721
Coalter v. Hunter	4	"	58,	15	"	"	726
Stuart v. Coalter	4	"	74,	15	"	"	731–n
Hays v. Wood	4	"	272,	15	"	"	754
Garland v. Rives	4	"	282,	15	"	"	756
Hamilton v. Shrewsbury	4	"	427,	15	"	"	779
Almond v. Almond	4	"	662,	15	"	"	781
Hunter v. Fulcher	5	"	126,	16	"	"	738
Graff v. Castleman	5	"	195,	16	"	"	741–n

Rees v. Conococheague Bank	5	Rand.	326,	16	Am. Dec.	755
Brown v. Toell's Admr	5	"	543,	16	" "	759
Jones v. Mason	5	"	577,	16	" "	761
Anderson v. Commonwealth	5	"	627,	16	" "	776
Smock v. Dade	5	"	639,	16	" "	780
Prentis v. Commonwealth	5	"	697,	16	" "	782-n
Glasscock v. Batton	6	"	78,	18	" "	703
Culpeper Mfg. Soc. v. Digges	6	"	165,	18	" "	708
Kelly v. Kelly	6	"	176,	18	" "	710
Rhodes v. Cousins	6	"	188,	18	" "	715
Hite v. Long	6	"	457,	18	" "	719
Pleasants v. Pendleton	6	"	473,	18	" "	726
Truss v. Old	6	"	556,	18	" "	748
Heth v. Woolridge	6	"	605,	18	" "	751
Coleman v. Cocke	6	"	618,	18	" "	757
Whiteford v. Commonwealth	6	"	721,	18	" "	771-n
Salling v. McKinney	1	Leigh	42,	19	" "	722
Newsum v. Newsum	1	"	86,	19	" "	739
Haleys v. Williams	1	"	140,	19	" "	743
Coplin v. McCalley	1	"	280,	19	" "	748
Crews v. Pendleton	1	"	297,	19	" "	750-n
Dunlop v. Keith	1	"	430,	19	" "	755
Rawlings v. Commonwealth	1	"	581,	19	" "	757
Waller v. Armisted	2	"	11,	21	" "	594
Kinney's Executors v. Harvey	2	"	70,	21	" "	597
Lee v. Stewart	2	"	76,	21	" "	599
McKinney v. Pinckard	2	"	149,	21	" "	601
King William Justices v. Munday	2	"	165,	21	" "	604
Bolling v. Stokes	2	"	178,	21	" "	606
Orndoff v. Turman	2	"	200,	21	" "	608
Norris v. Hume	2	"	334,	21	" "	631
Christian v. Miller	3	"	78,	23	" "	251
Carthrae v. Brown	3	"	98,	23	" "	255
Winn v. Bob	3	"	140,	23	" "	258
Newell v. Mayberry	3	"	250,	23	" "	261
Faulkner v. Faulkner's Exrs	3	"	255,	23	" "	264
Watts v. Kinney	3	"	272,	23	" "	266
Doswell v. Buchanan's Exrs	3	"	365,	23	" "	280
Gallego's Exrs. v. Attorney General	3	"	450,	24	" "	650-n
Mowry v. Miller	3	"	561,	24	" "	680
Moore v. Holcombe	3	"	597,	24	" "	683
Osiander v. Commonwealth	3	"	780,	24	" "	693
Vass v. Commonwealth	3	"	786,	24	" "	695
Gilliam v. Moore	4	"	30,	24	" "	704
Brown v. Ferguson	4	"	37,	24	" "	707
Barrett v. Wills	4	"	114,	26	" "	315
Tabb v. Binford	4	"	132,	26	" "	317

Elam v. Keen	4	Leigh	333,	26	Am. Dec.	322
Briggs v. Hall	4	"	484,	26	" "	326
Pierce v. Massenburg	4	"	493,	26	" "	333
Commonwealth v. Burton	4	"	645,	26	" "	337
Commonwealth v. Thompson	4	"	667,	26	" "	339
Hord v. Commonwealth	4	"	674,	26	" "	340
Blunt v. Commonwealth	4	"	689,	26	" "	341
Pendleton v. Commonwealth	4	"	694,	26	" "	342
Poore v. Price	5	"	52,	27	" "	582
Sturtevant v. Goode	5	"	83,	27	" "	586
Marshall v. Colvert	5	"	146,	27	" "	589
Boisseau v. Aldridges	5	"	222,	27	" "	590
Harrison v. Lane	5	"	414,	27	" "	607
French v. Commonwealth	5	"	512,	27	" "	613
Brown v. Higginbotham	5	"	583,	27	" "	618
Hinchman v. Lawson	5	"	695,	27	" "	622
Allen v. Harlan	6	"	42,	29	" "	205
Moore v. Fitz Randolph	6	"	175,	29	" "	208
Kerney's Admr. v. Kerney's Heirs	6	"	478,	29	" "	213
Collins v. Jones	6	"	530,	29	" "	216
Steele v. Boyd	6	"	547,	29	" "	218-n
Commonwealth v. Hite	6	"	588,	29	" "	226-n
Hall v. Commonwealth	6	"	615,	29	" "	236
Naylor v. Throckmorton	7	"	98,	30	" "	492
Wilkinson v. Jett	7	"	115,	30	" "	493
Rider v. Nelson & A. U. F.	7	"	154,	30	" "	495
Smith v. Jones	7	"	165,	30	" "	498
Turner v. Davis	7	"	227,	36	" "	502
Chapline v. Overseers of Poor	7	"	231,	30	" "	504
Cromwell v. Tate's Exr	7	"	301,	30	" "	506
Harris v. Carson	7	"	632,	30	" "	510
Ruffners v. Lewis' Exr	7	"	720,	30	" "	513
Brown v. Bonner	8	"	1,	31	" "	637
Callaway v. Alexander	8	"	114,	31	" "	640
Skipwith v. Cunningham	8	"	271,	31	" "	642
Kinnaird v. Williams	8	"	400,	31	" "	658
Yeager v. Carpenter	8	"	454,	31	" "	665
James v. Bird's Admr	8	"	510,	31	" "	568
Doolittle v. Malcolm	8	"	608,	31	" "	671
Tremper v. Hemphill	8	"	623,	31	" "	673

[To be continued.]